



110TH CONGRESS
1ST SESSION

H. R. 4790

To amend title XVIII of the Social Security Act to provide for standardized marketing requirements under the Medicare Advantage Program and the Medicare Prescription Drug Program and to provide for State certification prior to waiver of licensure requirements under the Medicare Prescription Drug Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2007

Ms. CASTOR introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide for standardized marketing requirements under the Medicare Advantage Program and the Medicare Prescription Drug Program and to provide for State certification prior to waiver of licensure requirements under the Medicare Prescription Drug Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Accountability and
3 Transparency in Medicare Marketing Act of 2007”.

4 **SEC. 2. STANDARDIZED MARKETING REQUIREMENTS**
5 **UNDER THE MEDICARE ADVANTAGE AND**
6 **MEDICARE PRESCRIPTION DRUG PROGRAMS.**

7 (a) MEDICARE ADVANTAGE PROGRAM.—

8 (1) IN GENERAL.—Section 1856 of the Social
9 Security Act (42 U.S.C. 1395w–26) is amended—

10 (A) in subsection (b)(1), by inserting “or
11 subsection (c)” after “subsection (a)”; and

12 (B) by adding at the end the following new
13 subsection:

14 “(c) STANDARDIZED MARKETING REQUIREMENTS.—

15 “(1) DEVELOPMENT BY THE NAIC.—

16 “(A) REQUIREMENTS.—The Secretary
17 shall request the National Association of Insur-
18 ance Commissioners (in this subsection referred
19 to as the ‘NAIC’) to—

20 “(i) develop standardized marketing
21 requirements for Medicare Advantage or-
22 ganizations with respect to Medicare Ad-
23 vantage plans and PDP sponsors with re-
24 spect to prescription drug plans under part
25 D; and

1 “(ii) submit a report containing such
2 requirements to the Secretary by not later
3 than the date that is 9 months after the
4 date of enactment of this subsection.

5 “(B) PROHIBITED ACTIVITIES.—Such re-
6 quirements shall prohibit the following:

7 “(i) Cross-selling of non-Medicare
8 products or services with products or serv-
9 ices offered by a Medicare Advantage plan
10 or a prescription drug plan under part D.

11 “(ii) Up-selling from prescription drug
12 plans under part D to Medicare Advantage
13 plans.

14 “(iii) Telemarketing (including cold
15 calling) conducted by an organization with
16 respect to a Medicare Advantage plan or a
17 PDP sponsor with respect to a prescription
18 drug plan under part D (or by an agent of
19 such an organization or sponsor).

20 “(iv) A Medicare Advantage organiza-
21 tion or a PDP sponsor providing cash or
22 other monetary rebates as an inducement
23 for enrollment or otherwise.

24 “(C) ELECTION FORM.—Such require-
25 ments may prohibit a Medicare Advantage or-

1 organization or a PDP sponsor (or an agent of
2 such an organization or sponsor) from com-
3 pleting any portion of any election form used to
4 carry out elections under section 1851 or
5 1860D-1 on behalf of any individual.

6 “(D) AGENT AND BROKER COMMIS-
7 SIONS.—Such requirements shall establish
8 standards—

9 “(i) for fair and appropriate commis-
10 sions for agents and brokers of Medicare
11 Advantage organizations and PDP spon-
12 sors, including a prohibition on extra bo-
13 nuses or incentives; and

14 “(ii) for the disclosure of such com-
15 missions.

16 “(E) CERTAIN CONDUCT OF AGENTS.—
17 Such requirements shall address the conduct of
18 agents engaged in on-site promotion at a facil-
19 ity of an organization with which the Medicare
20 Advantage organization or PDP sponsor has a
21 co-branding relationship.

22 “(F) OTHER STANDARDS.—Such require-
23 ments may establish such other standards relat-
24 ing to marketing under Medicare Advantage

1 plans and prescription drug plans under part D
2 as the NAIC determines appropriate.

3 “(2) IMPLEMENTATION OF REQUIREMENTS.—

4 “(A) ADOPTION OF NAIC DEVELOPED RE-
5 QUIREMENTS.—If the NAIC develops standard-
6 ized marketing requirements and submits the
7 report pursuant to paragraph (1), the Secretary
8 shall promulgate regulations for the adoption of
9 such requirements. The Secretary shall ensure
10 that such regulations take effect not later than
11 the date that is 10 months after the date of en-
12 actment of this subsection.

13 “(B) REQUIREMENTS IF NAIC DOES NOT
14 SUBMIT REPORT.—If the NAIC does not de-
15 velop standardized marketing requirements and
16 submit the report pursuant to paragraph (1),
17 the Secretary shall promulgate regulations for
18 standardized marketing requirements for Medi-
19 care Advantage organizations with respect to
20 Medicare Advantage plans and PDP sponsors
21 with respect to prescription drug plans under
22 part D. Such regulations shall prohibit the con-
23 duct described in paragraph (1)(B), may pro-
24 hibit the conduct described in paragraph (1)(C),
25 shall establish the standards described in para-

graph (1)(D), shall address the conduct described in paragraph (1)(E), and may establish such other standards relating to marketing under Medicare Advantage plans and prescription drug plans as the Secretary determines appropriate. The Secretary shall ensure that such regulations take effect not later than the date that is 10 months after the date of enactment of this subsection.

“(C) CONSULTATION.—In establishing requirements under this subsection, the NAIC or Secretary (as the case may be) shall consult with a working group composed of representatives of Medicare Advantage organizations and PDP sponsors, consumer groups, and other qualified individuals. Such representatives shall be selected in a manner so as to insure balanced representation among the interested groups.

“(3) STATE REPORTING OF VIOLATIONS OF STANDARDIZED MARKETING REQUIREMENTS.—The Secretary shall request that States report any violations of the standardized marketing requirements under the regulations under subparagraph (A) or

(B) of paragraph (2) to national and regional offices of the Centers for Medicare & Medicaid Services.

“(4) REPORT.—The Secretary shall submit an annual report to Congress on the enforcement of the standardized marketing requirements under the regulations under subparagraph (A) or (B) of paragraph (2), together with such recommendations as the Secretary determines appropriate. Such report shall include—

“(A) a list of any alleged violations of such requirements reported to the Secretary by a State, a Medicare Advantage organization, or a PDP sponsor; and

“(B) the disposition of such reported violations.”.

(2) STATE AUTHORITY TO ENFORCE STANDARDIZED MARKETING REQUIREMENTS.—

(A) IN GENERAL.—Section 1856(b)(3) of the Social Security Act (42 U.S.C. 1395w-26(b)(3)) is amended—

(i) by striking “or State” and inserting “, State”; and

(ii) by inserting “, or State laws or regulations enacting the standardized mar-

1 keting requirements under subsection (c)”
2 after “plan solvency”.

3 (B) NO PREEMPTION OF STATE SANC-
4 TIONS.—Nothing in title XVIII of the Social
5 Security Act or the provisions of, or amend-
6 ments made by, this Act, shall be construed to
7 prohibit a State from imposing sanctions
8 against Medicare Advantage organizations,
9 PDP sponsors, or agents or brokers of such or-
10 ganizations or sponsors for violations of the
11 standardized marketing requirements under
12 subsection (c) of section 1856 of the Social Se-
13 curity Act (as added by paragraph (1)) as en-
14 acted by that State.

15 (3) CONFORMING AMENDMENT.—Section
16 1851(h)(4) of the Social Security Act (42 U.S.C.
17 1395w–21(h)(4)) is amended by adding at the end
18 the following flush sentence:

19 “Beginning on the effective date of the implementa-
20 tion of the regulations under subparagraph (A) or
21 (B) of section 1856(c)(2), each Medicare Advantage
22 organization with respect to a Medicare Advantage
23 plan offered by the organization (and agents of such
24 organization) shall comply with the standardized
25 marketing requirements under section 1856(c).”.

(b) MEDICARE PRESCRIPTION DRUG PROGRAM.—
 Section 1860D-4 of the Social Security Act (42 U.S.C.
 1395w-104) is amended by adding at the end the fol-
 lowing new subsection:

“(1) STANDARDIZED MARKETING REQUIREMENTS.—
 A PDP sponsor with respect to a prescription drug plan
 offered by the sponsor (and agents of such sponsor) shall
 comply with the standardized marketing requirements
 under section 1856(c).”.

**SEC. 3. STATE CERTIFICATION PRIOR TO WAIVER OF LI-
 CENSURE REQUIREMENTS UNDER MEDICARE
 PRESCRIPTION DRUG PROGRAM.**

(a) IN GENERAL.—Section 1860D-12(c) of the So-
 cial Security Act (42 U.S.C. 1395w-112(c)) is amended—

(1) in paragraph (1)(A), by striking “In the
 case” and inserting “Subject to paragraph (5), in
 the case”; and

(2) by adding at the end the following new
 paragraph:

“(5) STATE CERTIFICATION REQUIRED.—

“(A) IN GENERAL.—The Secretary may
 only grant a waiver under paragraph (1)(A) if
 the Secretary has received a certification from
 the State insurance commissioner that the pre-

1 scription drug plan has a substantially complete
2 application pending in the State.

3 “(B) REVOCATION OF WAIVER UPON FIND-
4 ING OF FRAUD AND ABUSE.—The Secretary
5 shall revoke a waiver granted under paragraph
6 (1)(A) if the State insurance commissioner sub-
7 mits a certification to the Secretary that the re-
8 cipient of such a waiver—

9 “(i) has committed fraud or abuse
10 with respect to such waiver;

11 “(ii) has failed to make a good faith
12 effort to satisfy State licensing require-
13 ments; or

14 “(iii) was determined ineligible for li-
15 censure by the State.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 paragraph (1) shall apply with respect to plan years begin-
18 ning on or after January 1, 2008.

19 **SEC. 4. NAIC RECOMMENDATIONS ON THE ESTABLISH-**
20 **MENT OF STANDARDIZED BENEFIT PACK-**
21 **AGES FOR MEDICARE ADVANTAGE PLANS**
22 **AND PRESCRIPTION DRUG PLANS.**

23 Not later than 30 days after the date of enactment
24 of this Act, the Secretary of Health and Human Services
25 shall request the National Association of Insurance Com-

1 missioners to establish a committee to study and make
2 recommendations to the Secretary and Congress on—

3 (1) the establishment of standardized benefit
4 packages for Medicare Advantage plans under part
5 C of title XVIII of the Social Security Act and for
6 prescription drug plans under part D of such Act;
7 and

8 (2) the regulation of such plans.

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